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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,675	02/25/2002	Cornelis Margaretha Theodorus Maria Bongers	VERHEES 207-KFM	2574

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Karl F Milde Jr
Milde Hoffberg & Macklin
Suite 460
10 Bank Street
White Plains, NY 10606

EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,675

Applicant(s)

BONGERS, CORNELIS
MARGARETHA THEODORUS

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-30,33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-30,33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 23, 2004 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 19, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994).

4. Gorlich et al. teaches a plural atmosphere package comprising a compartment tray with different types of food, such as meat and salad, held separately within different compartments that are sealed with a film structure wherein some of the parts of the film structure are different for each compartment, as recited in claim 19, wherein the film comprises a first film and a second film as recited in claim 21 (e.g. membranes 30 and 32 in Figures 5 and 6) that are adjacent to one another and have different

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characteristics or gas permeability, as recited in claims 22, and each compartment may contain a different modified atmosphere (Abstract, Column 1, lines 15-52, Column 2, line 42 to Column 3, line 11, Column 3, line 56 to Column 4, line 15). In particular, the meat compartment includes a low oxygen environment with a modified atmosphere and an impermeable cover film, while the salad or lettuce compartment includes an oxygen permeable cover film (Column 3, lines 3-11, Column 3, lines 56 to Column 4, line 5). As such Gorlich et al. teach the "film structure" comprises a material that is gas permeable on some part of the film structure that is besides or on the gas impermeable material part of the film structure (e.g. the embodiment of Figures 5 and 6 or Figure 12). Gorlich et al. are silent in teaching the film structure, such as the gas impermeable material part has a material that reacts with gases and is disposed on or in the gas impermeable material part of the film structure to control the atmosphere as recited in claim 19.

5. Krebs teaches products stored in low oxygen packaging utilizing modified atmosphere packaging and an oxygen impermeable film will include an oxygen scavenger to provide the lowest possible oxygen level in order to extend the shelf life. Krebs teaches the conventional oxygen scavenger is not easily incorporated into a film, but Krebs teaches an oxygen-scavenging strip that reacts with oxygen that is easily applied to a cover film (Note Column 1, line 5 to Column 2, line 20, column 3, line 35 to Column 4, line 38, Column 4 line 48 to Column 5, line 31). Krebs teaches the benefit of providing an oxygen scavenger strip is that it is easy to dispense, easy to adhesively attach, and easy to tailor for each type of package (Column 1, lines 35-63, Column 6, lines 4-28). Krebs teaches the structure could be used for low oxygen meat trays

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covered by gas impermeable films (Column 2, lines 54-66). Therefore, it would have been obvious to modify Gorlich et al. and include on the part of the film structure with the gas impermeable material an additional material that reacts with gases in a compartment of the tray, as recited in claim 19 since Krebs teaches applying a strip to a film applied to a modified atmosphere tray package will not only protect oxygen-sensitive foods, such as meat as taught by Gorlich, but provides the lowest possible oxygen level in order to extend the shelf life, while still being easy to dispense, attach, and tailor to a given film structure.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994) as applied to claims 19, 21, and 22 above, further in view of Myers (US 4515266).

7. Gorlich teaches each compartment has a permeability depending on the type of food selected, which can include meat and salad, and may include a modified atmosphere, but is silent in teaching perforations per se on a portion of the film structure. Myers also teaches produce stored in a container under modified atmosphere and covered by a film. Myers teaches providing perforations on the film will inhibit air inflow but allow gas outflow to prevent distortion (Abstract, Column 1, lines 5-68). Therefore, it would have been obvious to further modify Gorlich et al. and provide perforation in a part of the film structure since Gorlich et al. teach the tray may contain salad and Myers teaches providing perforation in the lid stock film of a produce

container, wherein the produce is held under modified atmosphere, in order to prevent build up of gases and eventual rupturing of the container.

8. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994) as applied to claims 19, 21, and 22 above, further in view of Speer et al. (US 5211875).

9. As discussed above in the rejection of claims 19, 21, and 22, modified Gorlich et al. includes the oxygen scavenger film of Krebs adhesively applied to the gas impermeable part of the film structure. Krebs teaches such oxygen scavenger films can be initiated by the method taught by Speer et al. (Column 4, lines 60-66).

10. Speer et al. teach initiating oxygen scavengers by exposing them to radiation (Abstract). Therefore, it would have been obvious to further modify Gorlich et al. such that the parts of the film structure include a material which passively manipulates radiation applied to the tray, since Krebs teach applying an oxygen scavenger material to the impermeable part of the film structure that can be initiated by the method taught by Speer et al. and Speer et al. teach initiating oxygen scavengers by exposing them to radiation.

11. Claims 23, 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994).

12. Regarding claims 23, 26-28, 30, Gorlich et al. teach a method of separately packaging various types of food in a single package (such as meat and salad)

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comprising the steps of placing one type of food in each compartment, placing a film structure above the compartments wherein at least some of the parts of the film are a first and second film that are of different characteristics or permeability and formed based on characteristics of the food (e.g. items 30 and 32 in Figure 5 and 6) as recited in claims 26,28, and 30 are adjacent to one another as recited in claim 28, are produced by fastening the two films to each other after which one film is removed locally as recited in claim 27 (i.e. as explained with respect to films 30 and 32 in Figures 5 and 6 Column 2, lines 41-63 and Column 3, lines 26-55) and sealing the film structure around the openings of the compartments as recited in claim 23 (Abstract, Column 1, lines 15-52, Column 2, line 42 to Column 3, line 11, Column 3, line 56 to Column 4, line 15). Thus, Gorlich et al. teach the general method of separately packaging meat in a compartment of a low oxygen modified atmosphere covered by an impermeable film and salad or lettuce in a compartment covered by an oxygen permeable film (Column 3, lines 3-11, Column 3, lines 56 to Column 4, line 5). As such Gorlich et al. teach the "film structure" comprises a material that is gas permeable on some part of the film structure that is besides or on the gas impermeable material part of the film structure (e.g. the embodiment of Figures 5 and 6 or Figure 12). Gorlich et al. are silent in teaching the film structure, such as the gas impermeable material part has a material that reacts with gases and is disposed on or in the gas impermeable material part of the film structure to control the storage atmosphere as recited in claim 23.

13. Krebs also teaches a method of filling trays with meat, sealing with a modified atmosphere, trays and covering the covered by an oxygen barrier film structure

(Column 2, lines 54-66). Krebs teaches products stored in low oxygen packaging utilizing modified atmosphere packaging and an oxygen impermeable film will include an oxygen scavenger to provide the lowest possible oxygen level in order to extend the shelf life. Krebs teaches the conventional oxygen scavenger, however, is not easily incorporated into a film, and Krebs teaches an oxygen scavenging strip that reacts with oxygen that is easily applied to a cover film (Column 1, line 5 to Column 2, line 20, column 3, line 35 to Column 4, line 38, Column 4 line 48 to Column 5, line 31). Krebs teaches the benefit of providing an oxygen scavenger strip is that it is easy to dispense, easy to adhesively attach, and easy to tailor for each type of package (Column 1, lines 35-63, Column 6, lines 4-28). Therefore, it would have been obvious to modify Gorlich et al. and include on the part of the film structure with the gas impermeable material an additional material that reacts with gases in a compartment of the tray, as recited in claim 23 since Krebs teaches applying a strip to a film applied to a modified atmosphere tray package will not only protect oxygen-sensitive foods, such as meat as taught by Gorlich, but provides the lowest possible oxygen level in order to extend the shelf life, while still being easy to dispense, attach , and tailor to a given film structure.

14. Regarding claim 29, Gorlich et al. teach it *may* be advantageous to form a film structure comprising two films of different characteristics after filling the tray (column 3, lines 27-55), but is silent in teaching that the processing or forming of the film structure takes place before the food is placed in the tray. Krebs teaches providing film structures of two films with different characteristics to cover trays may be done *either* applying each film of the structure separately to the tray as Gorlich et al. teach (e.g.

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note claim 17) or by first forming the film structure comprising two films with different characteristics before applying the film structure to the tray (e.g. note claim 26), depending if one wanted to apply one of the films to a variety of packages or apply the film structure to a particular package, such as for a tray (Column 5, line 48 to Column 6, line 28). Therefore, it would have been obvious to modify Gorlich et al. and process or form the film structure before the food is placed in the tray since Krebs teaches forming a film structure comprising two films of different characteristics may be done before or after the food is placed on the tray, depending on if it desired to use one film for a variety of packages or if the entire film structures is limited to use as a particular package.

15. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994) as applied to claims 23,26-30 above, further in view of Rooney et al. (WO9910251).

16. Modified Gorlich et al. include oxygen-scavenging material, but are silent in teaching irradiating a portion of the film structure.

17. Rooney et al. teach meat trays sealed by film structures including oxygen-scavenging layers. Rooney et al. teach it is advantageous to use oxygen scavenger layers that are triggered by irradiation so that the oxygen scavenging material can be stored under standard conditions prior to being applied to the package (Page 1, lines 31 to Page 2, line 7, Page 9, lines 15-25, Page 10, line 34 to Page 11, line 12). Therefore, it would have been obvious to further modify Gorlich and irradiate a portion of the film

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structure (i.e. the oxygen scavenging portion) since Rooney et al. teach irradiation triggered oxygen scavenging layers can be advantageously stored under standard conditions prior to sealing the trays.

18. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994) as applied to claims 23,26-30 above, further in view of Myers (US 4515266).

19. Gorlich teaches each compartment has a permeability depending on the type of food selected, which can include meat and salad, and may include a modified atmosphere, but are silent in teaching perforations per se on a portion of the film structure. Myers also teaches produce stored in a container under modified atmosphere and covered by a film. Myers teaches providing perforations on the film to inhibit air inflow but allow gas outflow in order to prevent distortion (Abstract, Column 1, lines 5-68). Therefore, it would have been obvious to further modify Gorlich et al. and provide perforations in a part of the film structure since Gorlich et al. teach the tray may contain salad and Myers teaches providing perforation in the lid stock film of a produce container, wherein the produce is held under modified atmosphere, in order to prevent build up of gases and eventual rupturing of the container.

20. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994) as applied to claims 23,26-30 above, further in view of Speer et al. (US 5211875).

21. As discussed above in the rejection of claims 23,26-30, modified Gorlich et al. includes the oxygen scavenger film of Krebs adhesively applied to the gas impermeable part of the film structure. Krebs teaches such oxygen scavenger films can be initiated by the method taught by Speer et al. (Column 4, lines 60-66).

22. Speer et al. teach initiating oxygen scavengers by exposing them to radiation (Abstract). Therefore, it would have been obvious to further modify Gorlich et al. such that the parts of the film structure include a material which passively manipulates radiation applied to the tray, since Krebs teach applying an oxygen scavenger material to the impermeable part of the film structure that can be initiated by the method taught by Speer et al. and Speer et al. teach initiating oxygen scavengers by exposing them to radiation.

Response to Arguments

23. In response to applicant's argument that there is no suggestion to combine Gorlich et al. and Krebs, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gorlich et al. teach a multi-compartment tray with different types of food require different storage conditions and different cover film characteristics. In one example, one

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compartment contains meat and is covered by a gas impermeable film to provide a low oxygen, modified atmosphere environment, while another compartment holds lettuce using an oxygen permeable film. Krebs teaches products stored in low oxygen packaging utilizing modified atmosphere packaging will include an oxygen scavenger to provide the lowest possible oxygen level in order to extend the shelf life. However, Krebs teaches the conventional oxygen scavenger is not easily incorporated into a cover film, and teaches an oxygen scavenging strip that is easily applied to a cover film and can be tailor made for a package. Krebs also teaches the structure could be used for meat trays (Note column 1, line 5 to Column 2, line 64). Thus, Krebs provides motivation in that the low oxygen modified environment of film-sealed meat trays is enhanced by a scavenging strip that is easily applied and tailor made for the tray.

24. Applicant asserts that in order to arrive at the claimed invention, the combination of Gorlich et al. with the teachings of Krebs would result in at least two separate films. It appears from this assertion that applicant believes the presently claimed invention recites only one film. This is not recited in the rejected claims. The claims recite "various ones of said parts of the film structure" provided with a gas permeable material and a gas reactive material wherein "said materials being disposed" in or on *some of said parts of the film structure*. On page 2, paragraph 1 it appears that the recited film structure encompasses multiple parts and separate films: "The term film structure can be understood to mean either one single film or a combination of various films on and/or beside each other, as well as film with a substance or a sticker on it." Based on this broad definition of film structure, "some of said parts of film structure" are taken to mean

a part of a film that is beside another film or on another film. Thus, the "film structure" of Gorlich modified by Krebs meets the limitations recited.

Conclusion

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761



MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700